

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11046 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHIMANBHAI S CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11046 of 1993
MR AY KOGJE for Petitioner No. 1-2
Mr. LR Poojari, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 02/04/2004

ORAL JUDGEMENT

The petitioners, who had taken voluntary retirement from service as per the scheme framed by the State Government, have preferred Special Civil Application under Article 226 of the Constitution of India for an appropriate writ, direction or order for quashing and setting aside action of the respondents of not releasing benefits of Voluntary Retirement Scheme

vide Annexure A to the petition and on the basis that the petitioners' last pay drawn as basic pay is Rs. 1440. The petitioners have also prayed for a declaration that the petitioners are entitled to get the benefits of Voluntary Retirement Scheme on the basis of the petitioners' last pay drawn salary being of Rs. 1440 in the pay-scale of RS. 1200-2040 along with interest and has also further prayed for quashing and setting aside the orders at Annexure D by which salary of the petitioners as on 1.1.1992 is fixed at Rs. 1350 and as on 1.1.1993 is fixed at Rs.1380.

2. That the petitioners were working as Machinememen with the respondents and they were given the benefits of higher pay-scale as per Government Resolution dated 5th July 1991 in the grade of RS. 1200-2040. It is the case of petitioners that the State Government formulated a scheme for technical staff of Voluntary Retirement Scheme and for that the concerned employees who were interested in getting the benefits of the Scheme were asked to fill-in the form. According to the petitioners, certain benefits and incentives were to be given under the said scheme which are mentioned in Annexure B to the petition. That as per the said scheme, the concerned employee was required to be given all the retiral benefits considering the salary and the pay-scale which was fixed on 1.7.1992 and accordingly as the petitioners were interested in getting Voluntary Retirement they had filled-in necessary forms. That both the petitioners were permitted to retire by order dated 30th June 1993 and they were required to be paid the retiral benefits considering the pay-scale of Rs. 1440 which was given to the petitioners as on 1.7.1992. However, the petitioners were not paid the retiral benefits considering their pay-scale at Rs. 1440 as on 1.7.1992 and therefore the present Special Civil Application is filed. That an order also came to be passed, which is Annexure D to the petition by which on the basis of audit objection the pay-scales of the petitioners as on 1.1.1992 were required to be refixed, as according to them the petitioners were not entitled to the benefit of higher pay-scale and they were wrongly given, and therefore by order dated 26th August 1993 the pay-scales of the petitioners were fixed at Rs. 1350 as on 1.1.1992 and at Rs. 1380 as on 1.1.1993, and accordingly considering the pay-scales of the petitioners as on 1.1.1992 at Rs. 1350 and at Rs. 1380 as on 1.1.1993, the retiral benefits which were required to be given under the voluntary retirement scheme were given to the petitioners. By order dated 26th August 1993 not only the pay-scales of the petitioners were refixed, but an order also came to be passed with regard to recovery

of difference of salary paid to the petitioners between 1.1.93 and 30th June 1993 which were paid to the petitioners on the basis of their pay-scales at Rs. 1440, and the petitioners have also challenged the said impugned order dated 26th August 1993 on the ground that the same is against the principles of natural justice and before passing the order and/or refixing their pay-scales opportunity of hearing was not given to the petitioners.

3. Mr. Pandya, learned advocate appearing for the petitioners has submitted that but for the fact that the petitioners were told that they were given the retiral benefits which were required to be given on voluntary retirement on the basis of the pay-scales which were prevailing as on 31.7.1992 they had accepted the voluntary retirement scheme and therefore there was a legitimate expectation and if subsequently when they were informed that they will be paid the retiral benefits on the basis of the different then they would not have accepted the voluntary retirement scheme. It is also further submitted on behalf of the petitioners that even before refixing their pay-scales as on 1.1.1992 no opportunity of being heard had been given to the petitioners and therefore the impugned order with regard to refixation of their pay-scales as on 1.1.92 and 1.1.93 requires to be quashed and set aside and the respondents are required to be directed to give retiral benefits considering their pay-scales as on 31.7.92 at Rs. 1440 and the recovery which is made pursuant to the order dated 26th August 1993 for the period between 1.1.93 to 30th June 1993 is required to be quashed and set aside and the amount thereof is required to be refunded to the petitioners.

4. On the other hand, Mr. Poojari, learned AGP has relied upon the affidavit-in-reply filed on behalf of the respondents. He has submitted that the petitioners were given the benefits of higher pay-scale subject to approval by the Audit Department and the petitioners were also informed accordingly in the year 1991 when the benefit of higher pay-scales were given and therefore on the basis of the audit objection if the department had refixed the pay-scale as on 1.1.91 there is no illegality committed by the respondents. It is also pointed out by Mr. Poojari on behalf of the respondents that as such none of the petitioners is entitled to benefit of higher pay-scale and they were not required to be given the higher pay-scale and therefore their pay-scale has been rightly refixed as on 1.1.1992 at Rs. 1350 and the petitioners are rightly given the retiral benefits under the Voluntary Retirement scheme. Considering the

pay-scale of the petitioners at Rs. 1350 which was prevalent at the relevant time, i.e., 31.7.1992. It is also further submitted on behalf of the respondents that there is no question of breach of any legitimate expectation. The petitioners were required to be given the benefits of voluntary retirement as per the scheme and certain incentives were also required to be given and all the benefits are given to the petitioners which are required to be given under the scheme. The only thing is that on refixation of the pay-scales of the petitioners as on 1.7.92/31.7.92 if the petitioners are required to be given the pay-scale less than that, then the same is required to be given and accordingly there is no question of not giving any benefit which is not arising from the scheme floated by the State Government. It is submitted on behalf of the respondents that the present petition is required to be dismissed.

5. I have heard the learned advocates appearing on behalf of the parties. So far as argument on behalf of the petitioners with regard to legitimate expectation is concerned, the same is required to be rejected. The petitioners are required to be given retiral benefits which were required to be given under the scheme which was framed. While accepting the voluntary retirement scheme the petitioners were required to be given gratuity amount instead of 15 days per year, 21 days per year and certain other additional benefits were required to be given which are given to the petitioners. The petitioners were required to be given the benefits considering their pay-scale which was prevailing as on 1.7.1992 and the petitioners are also paid the retiral benefits considering their pay-scale as on 1.7.1992, but on the basis of refixation of the pay-scale it cannot be said that the benefits which were required to be given as per the scheme are not given to the petitioners, and therefore the contention of the petitioners, that there was legitimate expectation that they will be given the particular amount, has no substance and the same is required to be rejected. So far as the contention of the petitioners with regard to violation of principles of natural justice while refixing pay-scale is concerned, at the time when the petitioners were given the benefit of higher pay-scale in the year 1991, it was specifically mentioned in the said order as one of the conditions that the same is subject to approval by the Audit Department and therefore when it has been found subsequently that the petitioners are not entitled to the benefit of higher pay-scale, by the Audit Department and if on that basis the pay-scale of the petitioners have been refixed, there is no question of giving opportunity of being heard to

the petitioners. While giving the benefits of higher pay-scale and/or doing the pay-fixation the employees are not required to be heard and no opportunity is required to be given to them. Under the circumstances, it cannot be said that the order dated 26th August 1993 is in breach of the principles of natural justice.

6. So far as the argument on behalf of the petitioners with regard to recovery of the amount for difference of the salary for the period of 1.1.93 to 30.6.93 and for any other period is concerned, the petitioners are justified in making the grievance that when they were paid the salary for the aforesaid pay-scale by the department, neither there was any misrepresentation on the part of the petitioners nor there was any fault on the part of the petitioners and therefore they cannot be made to suffer. Under the circumstances, the respondents are required to be directed to refund the amount which is recovered from the petitioners on refixation of the pay-scale, i.e., the difference of amounts in salary for the period between 1.1.93 to 30th June 1993.

7. In view of the aforesaid finding and the observations, the present Special Civil Application is required to be allowed partly by directing the respondents to refund the amount recovered from the petitioners being the difference of salary for the period between 1.1.93 to 30th June 1993 on refixation of their pay-scale within a period of three months from the date of receipt of writ of this Court. Order accordingly. So far as rest of the prayer of the petitioner to pay retiral benefits on the basis of the pay-scale of Rs. 1440 as on 1.1.1992, the same is rejected. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

rmr. [M.R. Shah, J.]